APPEAL NO. 022178
FILED OCTOBER 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on July 11, 2002. With respect to the issues before him, the hearing officer determined that the great weight of the other medical evidence is contrary to the report of the designated doctor, thus, he further determined that the respondent (claimant) reached maximum medical improvement (MMI) on August 7, 2001, with an impairment rating (IR) of six percent as certified by Dr. M, the claimant's treating doctor. The hearing officer further determined that the claimant had disability, as a result of his compensable injury, from July 17, 2000, to August 7, 2001. In its appeal, the appellant (carrier) argues that the hearing officer erred in determining that the great weight of the other medical evidence is contrary to the designated doctor's report and it requests that we reverse the hearing officer's MMI and IR determinations and render a new decision that the claimant reached MMI on July 17, 2000, with an IR of three percent, as certified by the designated doctor. In his response, the claimant urges affirmance.

DECISION

Reversed and rendered.

The hearing officer erred in determining that the great weight of the other medical evidence is contrary to the report of the designated doctor, which certified that the claimant reached MMI on July 17, 2000, with a three percent IR. The date of MMI and the IR are questions of fact. The hearing officer is the sole judge of the relevance, materiality, weight and credibility of the evidence offered. Section 410.165(a). As the finder of fact, the hearing officer is required to resolve the conflicts in the evidence, including the medical evidence. Texas Employers Ins. Co. v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this instance, Dr. M noted in his testimony that the difference between his opinion as to the date the claimant reached MMI and his IR and that of the designated doctor is attributable to a difference in medical opinion as to the respective doctor's interpretation of the claimant's positive bone scan results. The statute gives presumptive weight to the designated doctor's reconciliation of such a difference. *See* Sections 408.122(c) and 408.125(e). The opinion of the treating doctor on the issues of MMI and IR simply does not rise to the level of the great weight of the medical evidence contrary to the designated doctor's report. As such, the hearing officer erred in not giving presumptive weight to the designated doctor's certification. Accordingly, we reverse the determination that the claimant reached MMI on August 7, 2001, with an IR of six percent and render a new decision that the claimant reached MMI on July 17, 2000, with a three percent IR.

The carrier did not appeal the determination that the claimant had disability from July 17, 2000, to August 7, 2001; thus, that determination has become final. Section 410.169. However, because we have rendered a new decision that the claimant

reached MMI on July 17, 2000, as the carrier noted, the claimant is not entitled to temporary income benefits for that period of disability. *See* Sections 408.101 and 408.102.

The hearing officer's decision and order are reversed and a new decision rendered that the claimant reached MMI on July 17, 2000, with an IR of three percent, as certified by the designated doctor.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

MARVIN KELLY, EXECUTIVE DIRECTOR
TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION
9120 BURNET ROAD
AUSTIN, TEXAS 78758.

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Elaine M. Chaney
Appeals Judge

CONCUR:

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Judy L. S. Barnes
Appeals Judge

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Michael B. McShane
Appeals Judge